

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL
WITH PROOF
OF SERVICE

77-1420

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

B P/S

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v

NICHOLAS RIZZI,

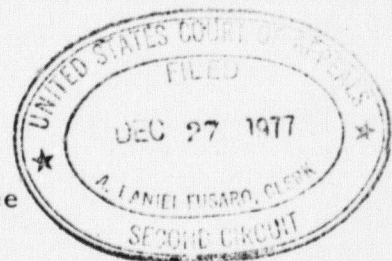
Defendant - Appellant.

ON APPEAL FROM A JUDGMENT AND COMMITMENT ORDER
OF THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

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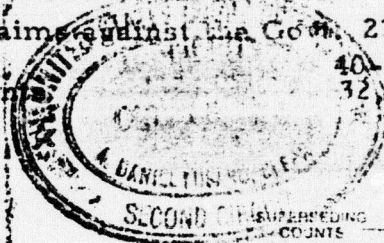
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COURT'S CHARGE TO JURY	A-22
JUDGMENT AND COMMITMENT ORDER	A-73

DOCKET ENTRIES

DOCKET NO. 0208 1	CASE NO. 0864	vs. RIZZI, NICHOLAS	10 28 76	1000 02
U.S. TITLE/SECTION		OFFENSES CHARGED		U.S. MAG. CASE NO.
18:371	Consp. to commit mail fraud	2-26		BAIL - RELEASE ☐ AMT ☐ Fugitive ☐ Ser ☐ Pers. R. ☐ P.A. ☐ condition ☐ 10% Bond ☐ Safety for ☐ Contain ☐ 3rd ☐ Any Govt.
18:1341	Mail Fraud	27-31, 33-38		
18:287	Making fraudulent claims against the Govt.	40-44, 46-51		
18:1001	Making false statements	32, 39, 45, 52		
18:495	Forgery	53-57		
				
II. KEY DATES & INTERVALS				
ARREST or		INDICTMENT		ARRAIGNMENT
U.S. Custody Began	High Risk Date	Information ☐	10-28-76	Trial Set For
Summons Served	Indict. Waived ☐	Superseding ☐	Indict/Info ☐	1st Plea
First Appearance	In Charging District			11-4-76
				Final Plea
				NG ☐ G ☐ NOL ☐
				NG ☐ G ☐ NOL ☐
				TRIAL
				Voir Dire ☐
				Trial Began ☐
				Trial Ended ☐
				Disposition of Charges
				Convicted ☐ On All Other Offenses
				Acquitted ☐ On Lesser Offenses
				Dismissed ☐ WOP ☐
				On Government Motion ☐
MAGISTRATE				
Search Warrant	Issued	DATE	INITIAL/NO.	INITIAL APPEARANCE DATE
Return	Issued			PRELIMINARY EXAMINATION OR
Summons	Served			REMOVAL HEARING
Arrest Warrant Issued				WAIVED ☐ NOT WAIVED ☐
COMPLAINT				INTERVENING INDICTMENT ☐
OFFENSE (in Complaint)				Outcome
				HELD FOR GOV. OR OTHER PROCEEDING IN THIS DISTRICT
				HELD FOR GOV. OR OTHER PROCEEDING IN DISTRICT BELOW

U.S. Attorney or Asst.

ATTORNEYS

Defense ☐ DA ☐ Ret ☐ Waived ☐ Ret ☐ None ☐ Other ☐ CD

Joann Harris
791-1919

* Show last names and suffix numbers of other defendants on same indictment information

DATE	DOCUMENT NO.	PROCEEDINGS	EXCESSIBLE DELAY (b) (c)
10-28-76		Filed indictment.....Gagliardi, J.	
11-4-76		Deft. referred to Magistrate for assignment of counsel. Ordered F/P. Court directs a not guilty plea be entered. PRB bond fixed in amount of \$25,000. Bond to be co-signed by a person satisfactory to the Govt. Deft. given to 4 pm today to post bond. Assigned to Goettel, J. for all purposes. Bail limits to include S. D. N. Y. and E. D. N. Y.....Cooper, J.	
11-05-76		Filed defts appearance bond - \$25,000. P.R.B. and co-signed by Mrs. A. Giusto.	
11-22-76		Filed the Following Magistrate papers. Appt. of counsel & Financial Affdvt.	
2-7-77		Fld Govt's affid & notice of motion for an order pursuant to Title 18 U.S.C. Section 3161 (h)(8) & the S.D.N.Y. Speedy trial Plan 10 (d) & (e) granting a continuance in the above captioned case pending the apprehension of deft Sylvan L. Sacolick	

DATE

3-77 Pre-trial conference held. DEft Rizzi & atty GErold Zuckerman present. Atty to submit further papers by 2-14-77... Goettel, J.

8-77 Fld envelope ordered sealed until further notice from the Court. (placed in Cashiers vault) Goettel, J.

2-14-77 Filed deft's memorandum of law in opposition to Govt's motion for a continuance.

2-14-77 Filed deft's affdvt. in opposition to Govt's motion for a continuance.

2-25-77 Fld govt's memorandum of law in support of motion for a continuance as to deft Rizzi

2-24-77 Fld memo end on motion fld 2-7-77- the Govt's motion for a continuance is denied with leave to renew the motion at a later date....Goettel, J. M/N

7-1-77 Filee Govt's affid in support of application for Ex Parte Order

7-11-77 Filed EX Parte ORDER.- Ordered that further disclosure of information contained in the patient records obtained by a Grand Jury Sub. Duces Tecum & the terms of the order entered by the Hon. Robert J. Ward dated Nov. 18, 1975 is hereby authorized to the following extent. It is ordered that the information heretofore authorized to be disclosed & kept & maintained without further dissemination by the office of the US Atty for the S.D.N.Y. & the Grand Jury may be disclosed to defense Atty's, deft's & any agents or witnesses working under the control of the Govt of the deft's in connection with the above captioned case- Ordered that no information obtained pursuant to this order may be further disclosed & it is further ordered that all other terms of the order of the Hon Robert J. Ward ent. on Nov 18, 1975 remain in effect.....GOETTEL, J. M/N

8-9-77 Filed memo end on letter from AUSA Jo Ann Harris to Judge Goettel dated 8-5-77- The Govt applies for a four day continuance in the interest of Justice, pursuant to 18 U.S.C. 3161 (h)(b) which will enable the trial to commence on Monday Aug. 15, 1977- Application GRANTED. So Ordered GOETTEL, J. M/N

8-12-77 Filed EX PARTE ORDER -Ordered that further disclosure of inf. contained in records obtained by a Grand Jury Sub. Duces Tecum issued in connection with the pre-ind. invest. in this case, which would otherwise be prohibited of Title 21 USC Section 1175 (a) & the terms of the Order dated 11-18-75 ent by the Hon. R.J. Ward & modified by the order dated 7-5-77 ent by this Court, is hereby authorized to the following extent. It is ordered that the info. authorized to be disclosed & kept & maintained without further dissemination by the office of the U.S. Atty for the SDNY & the Grand Jury except to defense atty's, deft's & any agent working under the control of the Govt. may be further disclosed to the following extent the orig. records if otherwise admissible shall be permitted to come into evidence without redaction etc. as indicated. ...GOETTEL, J. M/N (CONTINUED ON PG 3)

FILE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	CD NUMBER	DATE	RECEIPT NUMBER	CD NUMBER

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U.S. vs

NICHOLAS, RIZZI

76 1000

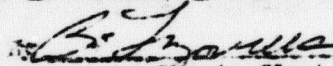
page 3

V. Docket No.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE D		
		(a)	(b)	(c)
8-12-77	Filed affid in support of Ex Parte order			
8-15-77	Deft & atty u. Zuckerman & Joann Harris AUSA present TRIAL begun			
8-16-77	TRIAL continued			
8-17-77	" "			
8-18-77	" "			
8-19-77	" "			
8-22-77	Trial continued- Counts 53 thru 57 dismissed by Court. Govt. & Deft rests. Counts 32, 39, 45 & 52 dismissed by Court			
8-23-77	Both sides rest. Both sides sum up Court charged Jury- Jury starts deliberations Jury verdict GUILTY Counts 1 thru 31, 33 thru 38, 40 thru 44, 46 thru 51 PSI ordered Date of sentence 10-4-77. Bail application \$25,000 cash or surety (Sec by Bank Book) assignment by Mother & Daughter....GOETTEL J.			
8-26-77	Filed Appearance Bond (Secured) in the amount of \$25,000.00., dated 8-26-77. Approved J.Harris(Ass.U.S. Atty).			
10-6-77	Filed JUDGMENT & COMMITMENT Deft & Atty present . The deft is hereby committed to the custody of the Atty General or his authorized representative for imprisonment for a period of THREE (3) YEARS on Counts 1,2,27,33,40 & 46 ,pursuant to Section 3651 Title 18, United States Code, as amended,with the provision that the deft be confined in a JAIL TYPE INSTITUTION for a period of SIX (6) MONTHS ,as provided in the aforesaid section Execution of the remainder of the sentence is suspended, and the deft is placed on probation for a period of THREE(3) YEARS subject to the standing probation order of this Court . Imposition of sentence is suspended on remaining counts , - Counts 3 thru 26,28 thru 31 , 34 thru 38,41 thru 44 & 47 thru 51. and deft placed on probation for a period of THREE (3) YEARS .Additional condition of Probation is that the deft participate in a Drug Treatment ProgramGOETTEL,J. copies issued			
10-6-77	Filed notice of appeal from the judgment of conviction entered on the 6th day of October 1977 (mailed copy to deft) (US Atty notified)			

A TRUE COPY

RAYMOND E. RUECHART, Clerk


 Deputy Clerk

A-4
INDICTMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- -x

UNITED STATES OF AMERICA :

- v - :

INDICTMENT

SYLVAN L. SACOLICK and
NICHOLAS RIZZI,

: 76 Cr.

Defendants. :

76 Cr 1000

----- -x

COUNT 1

The Grand Jury charges:

1. From on or about September 1, 1972, up to and including the date of the filing of this Indictment, in the Southern District of New York, the defendants SYLVAN L. SACOLICK and NICHOLAS RIZZI did unlawfully, wilfully and knowingly combine, conspire, confederate and agree together and with each other and with persons to the Grand Jury known and unknown, to defraud the United States, and to violate Title 18, United States Code, Sections 237, 1001 and 1341.

2. It was a part of said conspiracy that the defendants and the co-conspirators would and did agree to defraud the United States of its lawful right to have the United States Department of Health, Education and Welfare reimburse the State of New York, as provided in the Medicaid Act, fairly and impartially, without undue influence, unlawful inducement, false representation, favor or fraud, by causing the State of New York to file claims for reimbursement under said Medicaid Act which were based, in part, upon Invoices for Doctor's Services and other documents, which were false, fictitious and fraudulent in material respects.

3. It was further a part of said conspiracy that the defendants and their co-conspirators would and did make and cause to be made fraudulent claims upon and against the Department of Health, Education and Welfare, an agency and department of the United States.

4. It was further a part said conspiracy that the defendants and their co-conspirators, in matters within the jurisdiction of a department and agency of the United States, to wit, the United States Department of Health, Education and Welfare, would and did make and cause to be made false, fictitious and fraudulent statements and representations, knowing the same to be false, fictitious and fraudulent.

5. It was further a part of said conspiracy that the defendants and their co-conspirators would and did devise a scheme and artifice to defraud the City of New York, the State of New York and the United States Department of Health, Education and Welfare and to obtain money by false, fictitious and fraudulent pretenses and representations, and for the purpose of executing said scheme would and did place and cause to be placed certain checks in authorized depositories for mail.

6. Among the various means whereby the defendants and the co-conspirators would and did carry out the objects of said conspiracy were the following:

(a) The defendant SYLVAN L. SACOLICK, a physician, and his professional corporation, Sylvan Sacolick, M.D., P.C., owned and operated a methadone maintenance treatment program in the vicinity of 2369-71 Second Avenue, New York, New York, where heroin addicts received treatment consisting of a regularly administered daily maintenance dose of methadone, and other services. Methadone is an addictive drug which blocks heroin withdrawal symptoms.

(b) The defendant NICHOLAS RIZZI directed the operations of the treatment program.

(c) The defendant SYLVAN L. SACOLICK applied to the City of New York Medical Assistance Program (Medicaid) for authorization to bill Medicaid for services furnished to patients in the treatment program. Medicaid is jointly sponsored, administered and funded by the United States, the State of New York and the City of New York to pay physicians for treatment rendered to needy persons.

(d) The defendants SYLVAN L. SACOLICK and NICHOLAS RIZZI submitted and caused to be submitted Invoices for Doctor's Services (Medicaid claims) for services furnished to patients in the treatment program, to the New York City Department of Social Services, the agency designated by Medicaid to receive Medicaid claims for payment.

(e) These claims were in the name of the defendant SYLVAN L. SACOLICK.

(f) Each claim was for \$4, representing the maximum approved Medicaid fee for each daily visit of each patient enrolled in the treatment program.

(g) The defendant SYLVAN L. SACOLICK received approximately \$840,000.00 from Medicaid upon these \$4 per visit claims submitted in his name from in or around January 1973 to in or around December 1974, during which time the daily patient census varied from approximately 300 to 600 persons.

(h) Knowing that Medicaid policy mandated that these daily \$4 per visit Medicaid claims and payments constituted full compensation for all services rendered to treatment program patients, including daily methadone doses and medical care within the competence of a general practitioner, and that additional billing was permitted only when specific care by a specialist was necessary, the defen-

dants SYLVAN L. SACOLICK and NICHOLAS RIZZI formulated a plan to submit fraudulent double billing for routine medical care of the treatment program patients.

(i) To facilitate this plan, the defendants SYLVAN L. SACOLICK and NICHOLAS RIZZI recruited other doctors to provide medical care within the competence of a general practitioner during the patients' daily visits and caused fraudulent Medicaid claims to be submitted by these other doctors whom they induced to pay to the defendant SYLVAN L. SACOLICK a portion of the additional Medicaid payments thus generated.

(j) The defendants SYLVAN L. SACOLICK and NICHOLAS RIZZI caused the other doctors to submit these fraudulent claims in their own names, thereby concealing the fact that this billing from the other doctors was, in fact, billing for the same services which the defendant SYLVAN L. SACOLICK was required to include within his \$4 per visit claims.

(k) From in or around January 1973 to in or around November 1974, upon these fraudulent claims, Medicaid paid to the other doctors a total of approximately \$135,000.00 almost half of which they surrendered in various ways to the defendant SYLVAN L. SACOLICK.

OVERT ACTS

In furtherance of the said conspiracy and to effect the objects thereof, the defendant and the co-conspirators committed the following overt acts, among others, in the Southern District of New York.

1. On or about September 21, 1972, the defendant SYLVAN L. SACOLICK signed a Statement by Private Physician of Participation in the Methadone Maintenance Therapy Program

2. On or about March 27, 1973, the defendant SYLVAN L. SACOLICK signed his name on the back of a Medicaid check payable to Afzal H. Sahibzade, in the amount of \$7,248.50.

3. On or about April 26, 1973, the defendant SYLVAN L. SACOLICK signed his name on the back of a Medicaid check payable to Dr. George F. Kamen in the amount of \$4,417.50.

4. On or about August 15, 1973, the defendant SYLVAN L. SACOLICK received a personal check in the amount of \$1,540.00 from Khawata Ahmad Javaid.

5. On or about September 28, 1973, the defendant NICHOLAS RIZZI had a conversation with Khawata Ahmad Javaid about a payment to the defendant SYLVAN L. SACOLICK.

6. On or about April 24, 1974, the defendant NICHOLAS RIZZI directed a patient to go to 1175 Park Avenue, New York, New York.

7. On or about July 10, 1974, the defendant NICHOLAS RIZZI had a conversation with Mircea Zane about a payment to the defendant SYLVAN L. SACOLICK.

8. On or about July 29, 1974, the defendant SYLVAN L. SACOLICK received a personal check from Mircea Zane in the amount of \$2,872.00.

(Title 18, United States Code, Section 371).

COUNTS 2 THROUGH 26

The Grand Jury further charges:

1. On or about the dates hereinafter set forth in Counts 2 through 26, in the Southern District of New York, the defendants SYLVAN L. SACOLICK and NICHOLAS RIZZI did unlawfully, wilfully and knowingly devise and intend to devise a scheme and artifice to defraud the City of New York, the State of New York and the United States, and to obtain money and property from said governments by means of false and fraudulent pretenses, representations and promises.

2. The allegations contained in Paragraph 6 of Count 1 of this Indictment are repeated and realleged as though fully set forth herein as constituting and describing some of the means by which the defendants committed the offenses charged in Counts 2 through 26 herein.

3. For the purpose of executing said scheme and artifice to defraud and attempting to so do, the defendants SYLVAN L. SACOLICK and NICHOLAS RIZZI did deliver and cause to be delivered Invoices for Doctor's Services (Medicaid claims) to the New York City Department of Social Services and thereby did cause to be placed in post offices and authorized depositories for mail matter, and did cause to be delivered by mail, according to the directions therein, and did take and receive therefrom, certain mail matter, to wit, Medicaid payment checks as set out below.

<u>Count</u>	<u>Check #</u>	<u>Check Date</u>	<u>Addressee</u>	<u>Amount</u>
2	9326559	March 23, 1973	Afzal H. Sahibzade 1175 Park Avenue New York, N.Y. 10028	\$7,248.50
3	9332435	April 18, 1973	Afzal H. Sahibzade, MD 2369 - 2nd Ave. New York, N.Y. 10035	\$3,923.50
4	9339217	May 22, 1973	Dr. Afzal H. Sahibzade 2369 Second Ave. New York, N.Y. 10035	\$2,175.50
5	9363928	September 20, 1973	Dr. Afzal H. Sahibzada 1175 Park Avenue New York, N.Y. 10028	\$2,787.00
6	9354683	August 6, 1973	Dr. Khawaja Ahmah Javaid 2369 Second Ave. New York, N.Y. 10035	\$3,657.50
7	9365476	September 28, 1973	Dr. Khawaja A. Javaid 2369 Second Ave. New York, N.Y. 10036	\$2,631.50
8	9333216	April 24, 1973	Dr. George F. Kamen 2369 Second Ave. New York, N.Y. 10036	\$4,417.50
9	9338913	May 21, 1973	Dr. George F. Kamen 2369 Second Ave. New York, N.Y. 10036	\$6,460.00
10	9346058	June 25, 1973	Dr. George F. Kamen 2369 Second Ave. New York, N.Y. 10035	\$7,419.50
11	9351157	July 23, 1973	Dr. George F. Kamen 2369 - 2nd Ave. New York, N.Y. 10036	\$8,730.50
12	9358839	August 27, 1973	Dr. George F. Kamen 2369 Second Ave. New York, N Y 10036	\$8,987.00

<u>Count</u>	<u>Check #</u>	<u>Check Date</u>	<u>Addressee</u>	<u>Amount</u>
13	9365153	September 27, 1973	Dr. George F. Kamen 2369 Second Ave. New York, NY 10036	\$4,693.00
14	9372224	October 30, 1973	Dr. George F. Kamen 2369 Second Ave. New York, N.Y. 10035	\$7,448.00
15	9379465	November 27, 1973	Dr. George F. Kamen 2369 Second Ave. New York, N.Y. 10036	\$3,854.00
16	9386821	December 31, 1973	Dr. George F. Kamen 2369 Second Avenue New York, N.Y. 10036	\$6,916.00
17	9392384	January 21, 1974	Dr. George F. Kamen 2369 Second Ave. New York, N Y 10031	\$4,245.00
18	9400053	February 25, 1974	Dr. George F. Kamen 23-69 - 2nd Avenue New York, N.Y. 10035	\$6,180.00
19	9406649	March 22, 1974	Kamen, George F. 2369 Second Ave. New York, N.Y. 10036	\$3,525.00
20	9413115	April 19, 1974	Kamen, George F. 2369 Second Ave. New York, N Y 10031	\$2,437.00
21	4352450	June 10, 1974	Kamen, George F. Pk. Ave. Prof. 1175 Park Ave. New York, N.Y. 10028	\$ 20.00
22	4371378	June 24, 1974	Kamen, George F. Pk. Ave. Prof. 1175 Park Ave. New York, N.Y. 10028	550.00
23	9433473	July 11, 1974	Kamen, George F. Pk. Avenue Prof. 1175 Park Avenue New York, N.Y. 10028	\$3,340.00
24	9434576	July 17, 1974	Kamen, George F. Pk. Ave. Prof. 1175 Park Ave. New York, N.Y. 10028	\$ 273.00
25	9440644	August 21, 1974	Kamen, George F. 2369 2nd Avenue New York, N.Y. 10036	\$1,740.00
26	9433103	July 10, 1974	Zane, Mircea 1175 Park Ave. New York, N.Y. 10028	\$6,444.00

(Title 18, United States Code, Sections 1341 and 2).

COUNTS 27 THROUGH 31

The Grand Jury further charges:

1. On or about the dates hereinafter set forth in Counts 27 through 31, in the Southern District of New York, the defendants SYLVAN L. SACOLICK and NICHOLAS RIZZI did unlawfully, wilfully and knowingly make and present and cause to be made and presented to the United States Department of Health, Education and Welfare, a department and agency of the United States, for payment, certain claims upon and against the United States, to wit, Invoices for Doctors' Services (Medicaid claims) in the names of physicians hereinafter set forth, for medical services rendered to Andrew Joe, a pseudonym used herein to protect the privacy of a real person who was an enrolled patient at the defendant SYLVAN L. SACOLICK's methadone maintenance treatment program located in the vicinity of 2369-71 Second Avenue, New York, New York.

2. Said claims were fraudulent, as the defendants then and there well knew, in that, among other things, each sought payment for medical service within the competence of a general practitioner, and as such duplicated the Medicaid claims submitted by the defendant SYLVAN L. SACOLICK for the methadone maintenance treatment of Andrew Joe.

<u>Count</u>	<u>Physician</u>	<u>Invoice #</u>	<u>Date of Service</u>
27	Afzal Hamid Sahibzada	E 051165	March 8, 1973
28	Khawata Ahmad Javaid	F 244793	July 27, 1973
29	George F. Kamen	K 813513	December 19, 1973
30	Mircea Zane	N 422992	April 16, 1974
31	Jose Arandia	M 954101	March 6, 1974

(Title 18, United States Code, Sections 287 and 2).

COUNT 32

The Grand Jury further charges:

1. On or about April 25, 1973, in the Southern District of New York, the defendants SYLVAN L. SACOLICK and NICHOLAS RIZZI in connection with the treatment of Andrew

Jl:ds
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Joe, a pseudonym used herein to protect the privacy of the real person, and in a matter within the jurisdiction of a department and agency of the United States, to wit, the Department of Health, Education and Welfare, did unlawfully, wilfully and knowingly make and cause to be made a false, fictitious and fraudulent statement and representation, to wit, the certification on Invoice for Doctor's Services (Medicaid claim) # D 418432, knowing the same to be a false, fictitious and fraudulent representation.

2. Said representation was false, fictitious and fraudulent in that among other things, it purported to certify that the medical services claimed therein had been furnished by Jose Arandia, when in truth and fact, Jose Arandia had not furnished the medical services so certified.

(Title 18, United States Code, Sections 1001 and 2).

COUNTS 33 THROUGH 38

The Grand Jury further charges:

1. On or about the dates hereinafter set forth in Counts 33 through 38, in the Southern District of New York, the defendants SYLVAN L. SACOLICK and NICHOLAS RIZZI did unlawfully, wilfully and knowingly make and present and cause to be made and presented to the United States Department of Health, Education and Welfare, a department and agency of the United States, for payment, certain claims upon and against the United States, to wit, Invoices for Doctor's Services (Medicaid claims) in the names of the physicians hereinafter set forth for medical services rendered to Veronica Coe, a pseudonym used herein to protect the privacy of a real person who was an enrolled patient at the defendant SYLVAN L. SACOLICK's methadone maintenance treatment program located in the vicinity of 2369-71 Second Avenue, New York, New York.

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d-304

2. Said claims were fraudulent, as the defendants then and there well knew, in that, among other things, each sought payment for medical services within the competence of a general practitioner, and as such duplicated the Medicaid claims submitted by the defendant SYLVAN L. SACOLICK for the methadone maintenance treatment of Veronica Coe.

<u>Count</u>	<u>Physician</u>	<u>Invoice #</u>	<u>Date of Service</u>
33	Mircea Zane	H 471096	October 13, 1973
34	Afzal Hamid Sahibzada	D 893845	March 9, 1973
35	Khawata Ahmad Javaid	F 244758	July 18, 1973
36	George F. Kamen	H 465807	August 9, 1973
37	Mircea Zane	N 422805	April 6, 1974
38	Jose Arandia	I 264720	October 31, 1973

(Title 18, United States Code, Sections 237 and 2).

COUNT 39

The Grand Jury further charges:

1. On or about March 23, 1973 in the Southern District of New York, the defendants SYLVAN L. SACOLICK and NICHOLAS RIZZI, in connection with the treatment of Veronica Coe, a pseudonym used herein to protect the privacy of the real person, and in a matter within the jurisdiction of a department and agency of the United States, to wit, the Department of Health, Education and Welfare, did unlawfully, wilfully and knowingly make and cause to be made a false, fictitious and fraudulent statement and representation, to wit, the certification on the Invoice for Doctor's Services (Medicaid claim) # C 173100, knowing the same to be a false, fictitious and fraudulent representation.

2. Said representation was false, fictitious and fraudulent in that, among other things, it purported to certify that the medical services claimed therein had been furnished by Jose Arandia, when in truth and fact, Jose Arandia had not furnished the medical services so certified.

(Title 18, United States Code, Sections 1001 and 2).

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COUNTS 40 THROUGH 44

The Grand Jury further charges:

1. On or about the dates hereinafter set forth in Counts 40 through 44, in the Southern District of New York, the defendants SYLVAN L. SACOLICK and NICHOLAS RIZZI did unlawfully, wilfully and knowingly make and present and cause to be made and presented to the United States Department of Health, Education and Welfare, a department and agency of the United States, for payment, certain claims upon and against the United States, to wit, Invoices for Doctor's Services (Medicaid claims) in the names of the physicians hereinafter set forth for medical services rendered to Robert Doe, a pseudonym used herein to protect the privacy of a real person who was an enrolled patient at the defendant SYLVAN L. SACOLICK's methadone maintenance treatment program located in the vicinity of 2369-71 Second Avenue, New York, New York.

2. Said claims were fraudulent, as the defendants then and there well knew, in that, among other things, each sought payment for medical services within the competence of a general practitioner, and as such duplicated the claims submitted by the defendant SYLVAN L. SACOLICK for the methadone maintenance treatment of Robert Doe.

<u>Count</u>	<u>Physician</u>	<u>Invoice #</u>	<u>Date of Service</u>
40	Afzal Hamid Sahibzada	E 051267	March 20, 1973
41	Khawata Ahmad Javaid	F 532575	April 26, 1973
42	George F. Kamen	F 245056	May 15, 1973
43	Mircea Zane	O 075901	June 5, 1974
44	Jose Arandia	G 474792	July 25, 1973

(Title 18, United States Code, Sections 287 and 2).

COUNT 45

The Grand Jury further charges:

1. On or about March 28, 1973, in the Southern District of New York, the defendants SYLVAN L. SACOLICK and NICHOLAS RIZZI, in connection with the treatment of Robert Doe, a pseudonym used herein to protect the privacy of the real person and in a matter within the jurisdiction of a depart-

AH:ds
-304

ment and agency of the United States, to wit, the Department of Health, Education and Welfare, did unlawfully, wilfully and knowingly make and cause to be made a false, fictitious and fraudulent statement and representation, to wit, the certification on the Invoice for Doctor's Services (Medicaid claim) # C 172807, knowing the same to be a false, fictitious and fraudulent representation.

2. Said representation was false, fictitious and fraudulent in that, among other things, it purported to certify that the medical services claimed therein had been furnished by Jose Arandia, when in truth and fact, Jose Arandia had not furnished the medical services so certified.

(Title 18, United States Code, Sections 1001 and 2).

COUNTS 46 THROUGH 51

The Grand Jury further charges:

1. On or about the dates hereinafter set forth in Counts 46 through 51, in the Southern District of New York, the defendants SYLVAN L. SACOLICK and NICHOLAS RIZZI did unlawfully, wilfully and knowingly make and present and cause to be made and presented to the United States Department of Health, Education and Welfare, a department and agency of the United States, for payment, certain claims upon and against the United States, to wit, Invoices for Doctor's Services (Medicaid claims) in the names of the physicians hereinafter set forth for medical services rendered to Joan Hoe, a pseudonym used herein to protect the privacy of a real person who was an enrolled patient at the defendant SYLVAN L. SACOLICK's methadone maintenance treatment program located in the vicinity of 2369-71 Second Avenue, New York, New York.

2. Said claims were fraudulent, as the defendants then and there well knew, in that, among other things, each sought payment for medical services within the competence of a general practitioner, and as such duplicated the Medicaid claims submitted by the defendant SYLVAN L. SACOLICK for the methadone

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maintenance treatment for Joan Hoe.

<u>Count</u>	<u>Physician</u>	<u>Invoice #</u>	<u>Date of Service</u>
46	Mircea Zane	H 471081	October 13, 1973
47	Afzal Hamid Sahibzada	D 895139	February 1, 1973
48	Khawata Ahmad Javaid	F 244632	June 14, 1973
49	George F. Kamen	F 532039	May 9, 1973
50	Mircea Zane	P 467743	June 18, 1974
51	Jose Arandia	N 422067	April 10, 1974

(Title 18, United States Code, Sections 287 and 2).

COUNT 52

The Grand Jury further charges:

1. On or about April 11, 1973, in the Southern District of New York, the defendants SYLVAN L. SACOLICK and NICHOLAS RIZZI, in connection with the treatment of Joan Hoe, a pseudonym used herein to protect the privacy of the real person, and in a matter within the jurisdiction of a department and agency of the United States, to wit, the Department of Health, Education and Welfare, did unlawfully, wilfully and knowingly make and cause to be made a false, fictitious and fraudulent statement and representation, to wit, the certification on the Invoice for Doctor's Services (Medicaid claim) # C 172823, knowing the same to be a false, fictitious and fraudulent representation.

2. Said representation was false, fictitious and fraudulent in that, among other things, it purported to certify that the medical services claimed therein had been furnished by Jose Arandia, when in truth and fact, Jose Arandia had not furnished the medical services so certified.

(Title 18, United States Code, Sections 1001 and 2).

COUNTS 53 THROUGH 57

The Grand Jury further charges:

In or around July and August 1974, in the Southern District of New York, the defendants SYLVAN L. SACOLICK and NICHOLAS RIZZI, unlawfully, wilfully and knowingly did

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falsely make, forge and counterfeit and cause to be falsely made, forged and counterfeited, a writing, namely the endorsement of the payee on various checks, to wit, the words "George Kamen" on the back thereof, for the purpose of obtaining from the United States and its officers and agents sums of money, the checks being checks drawn on The City of New York, Department of Social Services Medicaid Account, of the following tenor:

<u>Count</u>	<u>Check Date</u>	<u>Check Amount</u>	<u>Check Number</u>	<u>Payee</u>
53	June 10, 1974	\$ 20.00	4352450	Kamen, George F. Pk. Ave. Prof. 1175 Park Avenue New York N.Y. 10028
54	June 24, 1974	\$ 550.00	4371378	Kamen, George F. Pk. Ave. Prof. 1175 Park Ave. New York N.Y. 10028
55	July 11, 1974	\$3,340.00	9433473	Kamen, George F. Pk. Avenue Prof. 1175 Park Avenue New York, N.Y. 10028
56	July 17, 1974	\$ 273.00	9434576	Kamen, George F. Pk. Ave. Prof. 1175 Park Avenue New York, N.Y. 10028
57	August 21, 1974	\$1,740.00	9440644	Kamen, George F. 2369 2nd Avenue New York, N.Y. 10036

(Title 18, United States Code, Sections 495 and 2).

FOREMAN

ROBERT B. FISKE, JR.
United States Attorney

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TRANSCRIPT OF TRIAL MOTION

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absence of the jury, your Honor?

THE COURT: Yes. We will excuse the jury.

(Jury excused.)

MR. ZUCKERMAN: Your Honor, before I make my motions, I was going to state that the defendant intends to rest and you might want to excuse the jury for the day.

THE COURT: Yes. If you are going to rest, all we will do for the rest of the day is hear your motions and have summations tomorrow.

Madam Clerk, please tell the jury that they will be excused for the rest of the day and to come back 10:00 o'clock tomorrow morning.

MR. ZUCKERMAN: If it please the Court, upon the completion of the Government's case, the defendant respectfully moves for a judgment of acquittal on each and every count in the indictment.

First I would like to make a general objection that where a person is charged as an agent -- with aiding and abetting that there first must be a conviction of the principal in question.

I realize there really is an apparent conflict among the various circuits. This circuit has held that it is not necessary that the principal be convicted of a

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substantive crime.

However, what I would like to point out, your Honor, is that here the evidence of the crime is extremely tenuous. What we are dealing with here, your Honor, involves the mental state of the principal, Sacolick. It is unlike the case where you have a robbery where the jury can hear all the evidence and make determinations.

Here the issue is the state of mind of Sacolick because the things he did, the apparent operation of his scheme, so to speak, involved very, very close questions. For example, referring out, is it proper to have a specialist on the premises or should it be referred out? I think Dr. Newman said well in the city it is very clear-cut, but it is sort of rather loose, and it's rather loose whether that -- whether a referral must be sent out.

THE COURT: I don't take it that that is the issue because the basic premise is that, with very few exceptions, all the work was general practitioner work, so that the fact that it was done on premises would not change the picture particularly, if these people had been stuck over in the Park Avenue office, for example, I think the Government's position would be identically the same. They are billing as separate charges the

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routine medical care that was supposed to be covered by the \$4 a day.

MR. ZUCKERMAN: In any event, your Honor, this is a determination for a doctor and it is the state of mind that controls.

What the Government is forcing the defendant to do here is to defend against Sacolick's state of mind, which is very, very --

THE COURT: I don't agree with that. I think there is a very strong case here against Sacolick. It is hard to believe that he wasn't aware that the things he was doing were improper, but this defendant is defending against the claim that he knew that what was being done was improper.

For example, as we mentioned earlier with respect to the forgery of Dr. Kamen's name, there certainly is an issue for the jury as to whether he authorized it. The jury would be fully warranted in finding that Dr. Kamen did not authorize it.

But that would only go to Dr. Sacolick's guilt. With respect to this defendant, there is a further question of whether or not he knew that when Dr. Sacolick represented that he had been so authorized that this was not true.

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That is the way I view most of your case as going. The case, of course, is infinitely stronger against Sacolick in every respect but he's not here standing trial.

Obviously they can't convict the defendant of aiding and abetting unless they think that Dr. Sacolick as principal committed the crimes, but on all of them, take the question of signing Dr. Arandia's name to physicals done by Dr. Sacolick, the proof is very strong against Dr. Sacolick. It is a good deal thinner against this defendant that he knew of this switch.

So I deny the motion to the extent that there has been no conviction of the principal, although I am prepared to charge the jury that they cannot find the defendant guilty of aiding and abetting unless they are convinced that the principal himself committed the crime.

But, if I were you, I wouldn't dwell too long on that, because that is -- you want to get yourself as far away from Dr. Sacolick as you can.

MR. ZUCKERMAN: I understand, your Honor. I made this motion and the application because there is -- I believe the Fourth and Fifth Circuit do hold that there must be a conviction of the principal and I do want to preserve the record on that point.

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COURT'S CHARGE TO JURY

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2 that Rizzi was getting.

3 Now, I have really one more thing. You must
4 concern yourself with the evidence. You cannot concern
5 yourself with what Mr. Zuckerman asked you to imagine
6 might have happened, what could have occurred, what may
7 be out there some place that has not been brought into
8 this trial. You have to concern yourself not with what
9 I -- and I hope I haven't, but if I have given you anything
10 that I have simply imagined -- vague speculation on the
11 part of either one of us is something that you must ignore.
12 You should turn to the evidence and draw proper inferences
13 from the evidence.

14 The whole story isn't here. You have got to
15 piece it together for yourselves by using the evidence and
16 drawing proper inferences from the evidence. If you do
17 that, I am confident that you will do justice in this
18 case, and that is all that is required of you.

19 I have nothing else, your Honor.

20 CHARGE OF THE COURT

21 THE COURT: Mr. Foreman, members of the jury:

22 You are now about to enter upon your final duty,
23 which is to decide the factual issues of this case.

24 I told you at the start of the trial that your
25 principal function during the proceedings would be to

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2 listen carefully to the evidence, to observe each witness
3 as he testified.

4 You are now to perform your final duty in an
5 attitude of complete fairness and impartiality. You are
6 to appraise the evidence calmly and deliberately and, as
7 was emphasized, without the slightest bias or prejudice
8 for or against the defendant, or the Government, as
9 parties to this litigation.

10 Let me add that the fact that the Government
11 is a party entitles it to no greater consideration than
12 accorded to any other party. By the same token, it is
13 entitled to no less consideration.

14 All parties, Government and individual alike,
15 stand as equals before the bar of justice.

16 Your final role is to pass upon and decide the
17 factual issues, and you are the sole and exclusive judges
18 of the factual issues. You pass upon the weight of the
19 evidence, you determine the credibility of the witnesses
20 and you resolve such differences as there may be in the
21 testimony and you draw whatever reasonable inferences
22 you may find warranted by the facts as you determine them.

23 Now, my function at this point is to instruct
24 you as to the law and it is your duty to accept these
25 instructions upon the law and to apply them to the facts

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2 as you find them. The logical result of that application
3 will be the verdict in this case.

4 With respect to any fact, it is your recollec-
5 tion and yours alone that governs. Anything that counsel
6 for the Government or for the defendant may have said
7 is not evidence. Nothing stated by them in questions
8 or in argument or in summation is evidence. It is not
9 to be substituted for your own independent recollection of
10 the evidence.

11 For that matter, anything which I may say which
12 differs from your own recollection of the facts should be
13 ignored by you.

14 It has been the duty of the attorneys for each
15 side to object when the other side offers testimony or
16 evidence which the attorney believes is not properly
17 admissible. You should not show any prejudice whatever
18 against an attorney or his client because objections have
19 been made.

20 Upon allowing testimony or other evidence to
21 be introduced over the objections of an attorney, the
22 Court did not, unless expressly stated, indicate an
23 opinion as to the weight to be given, or any other aspect
24 of the evidence. As stated before, you the jurors are the
25 sole judges of the credibility of all witnesses and the

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2 weight and effect of all the evidence.

3 When I sustained objections to a question
4 addressed to a witness, the jury must disregard the ques-
5 tion entirely and may draw no inferences from the wording
6 of it or speculate as to what the witness would have said
7 if he had been permitted to answer that question.

8 So, too, anything that the Court may have said
9 during the progress of the trial or may say during the
10 course of these instructions with respect to any factual
11 matter is not to be taken in substitution of your own
12 recollection as to it.

13 During the course of the trial I asked questions
14 of certain witnesses. You are not to assume from the
15 fact that I asked these questions that I have any opinion
16 as to the merits of the case or as to the truthfulness of
17 the witnesses. I was merely attempting to clarify matters
18 for you and to expedite a disposition of this case to
19 move the case along.

20 The case must be decided, and this I told you
21 at the time of your selection as jurors, upon the sworn
22 testimony of the witnesses and such exhibits as were
23 received in evidence and on nothing else.

24 Now, there are certain principles of law which
25 apply in every criminal trial and which I also made

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2 reference to and emphasized at the time of your selection
3 as jurors, and I will repeat them now.

4 The indictment upon which the defendant is
5 brought to trial is merely an accusation, a charge. It
6 is no proof or evidence of the defendant's guilt. No
7 weight is to be given to the fact that a Grand Jury
8 returned the indictment against the defendant. He has
9 pleaded not guilty and the Government has the burden of
10 proving the charges against him beyond a reasonable
11 doubt. It is a burden that never shifts and remains upon
12 the Government throughout the entire trial.

13 The defendant does not have to prove his
14 innocence. On the contrary; he is presumed to be innocent
15 of the charges contained in the indictment. This pre-
16 sumption was in his favor at the start of the trial, it
17 continued throughout the trial, it is in his favor, as
18 I instruct you at this point, and will even continue in
19 his favor during the course of your deliberations in the
20 jury room.

21 It is removed only if and when you, the members
22 of the jury, are satisfied that the Government has sus-
23 tained its burden of proving the charges beyond a reason-
24 able doubt.

25 Now, the question naturally comes up what is a

1 bsim 70

2 reasonable doubt? The words almost define themselves.
3 It is a doubt founded in reason and arising out of the
4 evidence or lack of evidence in the case. It is a doubt
5 which a reasonable person has after carefully weighing
6 all of the evidence. Reasonable doubt is a doubt which
7 appeals to your reason, to your common sense, your exper-
8 ience and your judgment. It is not caprice, whim or
9 speculation. It is not an excuse to avoid the performance
10 of an unpleasant duty. It is not sympathy for the
11 defendant.

12 If, after a fair and impartial consideration of
13 all of the evidence, you can candidly and honestly say
14 that you are not satisfied of the defendant's guilt,
15 that you do not have an abiding conviction of the defendant's
16 guilt, in sum, if you have such doubt as would cause
17 you as a prudent person to hesitate before acting on
18 matters of importance to yourselves, then you have a
19 reasonable doubt. In that circumstance it would be your
20 duty to acquit.

21 On the other hand, if, after such an impartial
22 and fair consideration of all the evidence, you candidly
23 and honestly say that you do not have any doubts as to
24 the defendant's guilt, then you should find the defendant
25 guilty. This must be such a conviction as you would be

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2 willing to act upon in important and weighty matters in
3 your own personal affairs.

4 One final word on that subject. Reasonable
5 doubt does not mean a positive certainty or beyond all
6 possible doubt. If that were the rule, few men however
7 guilty they might be, would be convicted.

8 It is practically impossible for a person to
9 be absolutely and completely convinced of any controverted
10 fact which by its nature is not capable of determination
11 with mathematical precision. In consequence, the law
12 in a criminal case is that it is sufficient that the
13 guilt of a defendant is established beyond a reasonable
14 and not beyond all possible doubt.

15 We have two types of evidence: direct and
16 circumstantial evidence. I want to explain the difference
17 of these two types of evidence to you.

18 Direct evidence is where a witness testifies
19 that he heard something or observed something, what he
20 knows of his own knowledge, something which comes to him
21 by the virtue of his senses.

22 Circumstantial evidence is evidence of facts and
23 circumstances from which one may infer connected facts
24 which reasonably follow in the common experience of man-
25 kind.

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2 Stated somewhat differently, circumstantial
3 evidence is that evidence which tends to prove a disputed
4 fact by proof of other facts which have a logical tendency
5 to lead the mind to a conclusion that those facts exist
6 which are sought to be established.

7 Now, if that confuses you a little bit, I will
8 state it by analogy. When you came in here this morning
9 it was not raining outside. You have your backs to the
10 window and there were curtains on the windows, so you
11 cannot see if it is raining outside now. However, if as
12 we sat here, spectators came in wearing raincoats and
13 shaking water from umbrellas, you would say to yourself
14 "It's raining outside." You hadn't seen the rain but
15 you have seen certain facts from which you logically
16 conclude other facts. And that is all that -- that
17 logical conclusion is all that circumstantial evidence
18 is about.

19 Circumstantial evidence, if believed, has no
20 less value than direct evidence, for in either case you
21 must be convinced beyond a reasonable doubt of the guilt
22 of the defendant.

23 There are two defendants named in this indict-
24 ment, Sylvan L. Sacolick and Nicholas Rizzi. Only Nicholas
25 Rizzi is on trial before you. There remain 48 counts or

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2 separate criminal charges in the indictment. And they
3 pertain to three kinds of criminal offenses:

4 One is mail fraud. Counts 2 through 26 charged
5 the defendants with mail fraud; that is that they devised
6 a scheme to defraud the City of New York, the State of
7 New York and the Federal Government through the use of
8 the mails. Each of the counts involves a separate Medicaid
9 payment which was received in the names of Drs. Sahibzada,
10 Javaid, Kamen and Zane.

11 The second is fraudulent claims. Counts 27
12 through 31 charge the defendants with causing fraudulent
13 claims to be submitted to the United States Department
14 of Health, Education and Welfare, in connection with the
15 treatment of a patient at the defendants' methadone main-
16 tenance treatment program

17 Similarly, Counts 33 through 38, 40 through 44
18 and 46 through 51 charge fraudulent claims with respect
19 to the Medicaid billing of three other patients involved
20 in the program.

21 Each of these counts involve a separate Medicaid
22 invoice which was submitted in the names of the four doctors,
23 plus Dr. Arandia. The Government claims that each of
24 these invoices are fraudulent in that each is related
25 to the care within the competence of a general practitioner

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2 and thus should not have been submitted at all.

3 The first count is the conspiracy charge. It
4 charges the defendants conspiring -- that the defendants
5 conspired with each other--that is to say, worked in
6 concert with each other -- to commit the other crimes
7 charged in the indictment.

8 Before I set forth for you the essential elements
9 of each of the various crimes charged in this indictment,
10 I want to tell you about a statute that applies to all
11 of the substantive counts; that is to say, all but the
12 first count, the conspiracy count. It is called "aiding
13 and abetting." The aiding and abetting statute is set
14 forth in Title 18 of the United States Code in Section
15 2. In pertinent part it says that "Whoever aids, abets,
16 counsels, commands, induces or procures the commission of
17 an offense against the United States is punishable as a
18 principal. Whoever willfully causes an act to be done
19 which if directly performed by him would be an offense
20 against the United States is punishable as a principal."

21 What this means is that it is not necessary for
22 the Government to show that Nicholas Rizzi physically
23 committed the crimes charged himself. The statute
24 which I have just read provides that a person who aids
25 and abets another to commit an offense, or who causes

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2 another to commit an offense, is just as guilty of that
3 offense as if he committed it himself.

4 Accordingly you may find the defendant guilty
5 of the offenses charged in the substantive counts if
6 you find beyond a reasonable doubt that Sylvan L. Sacolick
7 committed the offenses charged and further find beyond a
8 reasonable doubt that the defendant Nicholas Rizzi aided
9 and abetted him.

10 In order to aid and abet another to commit a
11 crime, it is necessary that the accused person willfully
12 and knowingly associate himself in some way with the
13 crime charged; that he willfully and knowingly sought by
14 some act to help make the crime succeed.

15 To determine whether a defendant aided and
16 abetted the admission of an offense, you ask yourself
17 these questions: Did he associate himself with the ven-
18 ture and participate in it as something he wished to
19 bring about, to make it succeed? If he did, then he is
20 an aider and abettor.

21 There are two critical elements necessary in
22 order to convict the defendant on the basis of aiding
23 and abetting. First the Government must prove beyond a
24 reasonable doubt that a substantive crime has been committed
25 by the principal, Dr. Sacolick. And that the defendant

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2 had knowledge of the substantive offense and acted with
3 the intent to facilitate the commission of such offense.

4 To be guilty of aiding and abetting, it must
5 be proved beyond a reasonable doubt that the defendant
6 consciously assisted the commission of the specific crime
7 in some active way. Absent evidence of purposeful be-
8 havior or knowledge that a crime is being committed,
9 even when coupled with presence at the scene, is by itself
10 not enough to support a conviction on the bases of aiding
11 and abetting or membership in a conspiracy.

12 There is another important principle of law
13 which I want to bring to your attention before I set
14 forth the essential elements of the crimes charged. This
15 principle applies to all of the counts of the indictment.
16 With respect to each crime charged, you will hear me
17 tell you that one of the essential elements you must find
18 beyond a reasonable doubt before you can convict is
19 that the defendant acted knowingly.

20 Guilty knowledge cannot be established by demon-
21 strating mere negligence or even foolishness on the part
22 of the defendant and good faith is a complete defense.
23 However, I instruct you that in determining whether the
24 defendant had the requisite intent, that the element of
25 actual knowledge may be satisfied by proof that the

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2 defendant acted with deliberate disregard for the true
3 facts of the matter and with a conscious purpose to avoid
4 learning the truth, unless you find he actually believed
5 that the statements in the invoices were not fraudulent.
6 One may not deliberately close his eyes to what otherwise
7 would have been obvious to him.

8 Finally, when you are considering this question,
9 you should be aware that if you find that the defendant
10 acted with deliberate disregard of whether or not the
11 alleged scheme and related invoices were fraudulent, and
12 with a conscious effort to avoid learning, the requirement
13 of knowledge is satisfied even though you may find that
14 he was not specifically aware of the fact or the law
15 which would have established the fraudulent nature of the
16 scheme and invoices.

17 Counsel for both parties have suggested to you
18 that this is the crucial issue in the case. There was
19 evidence that the Government sent regulations to all
20 methadone maintenance clinics requiring that the general
21 medical care within the competence of a general practitioner
22 be provided as part of the methadone clinic charge.

23 There was substantial evidence that most of
24 the medical care billed separately to Medicaid under the
25 names of the five doctors was care that should have been

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2 provided as part of the clinic methadone charge.

3 The issue therefore is whether this defendant
4 knew that the doctors' charges should have been covered
5 by the methadone clinic charges, but were instead being
6 billed separately.

7 The evidence showed that the regulations were
8 sent to the physicians who provided the services which
9 in this clinic was listed as being Dr. Sacolick. But
10 there was evidence that these regulations were seen on
11 Mr. Rizzi's desk and that he had attended various seminars
12 where the difficulty of providing such care under the
13 existing rates was discussed.

14 Also, there was evidence of the defendant's
15 alleged expertise in this field, his financial involvement
16 his obtaining of signatures on blank forms and other
17 circumstantial evidence from which his knowledge could
18 be assumed.

19 On the other hand, all four clinic doctors who
20 testified claim that they were unaware of the regulation
21 and presence of double billing.

22 I believe it will be clearer if we proceed first
23 to the substantive counts in the indictment.

24 Counts 2 through 26 charge violations of the
25 Federal mail fraud statute. That statute reads in pertinent

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2 part as follows:

3 "Whoever, having devised or intending to devise
4 any scheme or artifice to defraud, or for obtaining money
5 or property by means of false or fraudulent pretenses,
6 represents or promises for the purpose of executing such
7 scheme, or artifice, or attempting to do so, places in
8 any post office or authorized depository for mail matter,
9 any matter or thing whatever to be sent, or delivered
10 by the post office department, shall be guilty of an
11 offense against the laws of the United States."

12 Count 2 of the indictment -- Counts 2 through
13 26 of the indictment charges as follows:

14 "On or about the dates hereinafter set forth
15 in Counts 2 through 26, in the Southern District of New
16 York, the defendants Sylvan L. Sacolick and Nicholas Rizzi
17 did unlawfully, wilfully and knowingly devise and intend
18 to devise a scheme and artifice to defraud the City of
19 New York, the State of New York and the United States, and
20 to obtain money and property from said governments by
21 means of false and fraudulent pretenses, representations
22 and promises.

23 "2. The allegations contained in Paragraph 6
24 of Count 1 of this indictment are repeated and realleged
25 as though fully set forth herein as constituting and

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2 describing some of the means by which the defendants
3 committed the offenses charged in Counts 2 through 26
4 herein."

5 Paragraph 6 of the conspiracy charge reads as
6 follows:

7 "Among the various means whereby the defendants
8 and the co-conspirators would and did carry out the objects
9 of said conspiracy were the following:

10 "(a) The defendant Sylvan L. Sacolick, a
11 physician, and his professional corporation, Sylvan
12 Sacolick, M.D., P.C., owned and operated a methadone
13 maintenance treatment program in the vicinity of 2369-71
14 Second Avenue, New York, New York, where heroin addicts
15 received treatment consisting of a regularly administered
16 daily maintenance dose of methadone and other services.
17 Methadone is an addictive drug which blocks heroin with-
18 drawal symptoms.

19 "(b) The defendant Nicholas Rizzi directed the
20 operations of the treatment program.

21 "(c) The defendant Sylvan L. Sacolick applied
22 to the City of New York Medical Assistance Program (Medicaid)
23 for authorization to bill Medicaid for services furnished
24 jointly to patients in the treatment program. Medicaid
25 is jointly sponsored, administered and funded by the United

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2 States, the State of New York and the City of New York to
3 pay physicians for treatment rendered to needy persons.

4 "(d) The defendants Sylvan L. Sacolick and
5 Nicholas Rizzi submitted and caused to be submitted Invoices
6 for Doctor's Services (Medicaid claims) for services
7 furnished to patients in the treatment program, to the
8 New York City Department of Social Services, the agency
9 designated by Medicaid to receive Medicaid claims for
10 payment.

11 "(e) These claims were in the name of the
12 defendant Sylvan L. Sacolick.

13 "(f) Each claim was for \$4, representing the
14 maximum approved Medicaid fee for each daily visit of
15 each patient enrolled in the treatment program.

16 "(g) The defendant Sylvan L. Sacolick received
17 approximately \$840,000 from Medicaid upon these \$4 per
18 visit claims submitted in his name from in or around
19 January 1973 to in or around December 1974, during which
20 time the daily patient census varied from approximately
21 300 to 600 persons.

22 "(h) Knowing that Medicaid policy mandated
23 that these daily \$4 per visit Medicaid claims and payments
24 constituted full compensation for all services rendered
25 to treatment program patients, including daily methadone

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2 doses and medical care within the competence of a general
3 practitioner, and that additional billing was permitted
4 only when specific care by a specialist was necessary,
5 the defendants formulated a plan to submit fraudulent double
6 billing for routine medical care of the treatment
7 program patients.

8 "(i) To facilitate this plan, the defendants
9 recruited other doctors to provide medical care within
10 the competence of a general practitioner during the
11 patients' daily visits and caused fraudulent Medicaid
12 claims to be submitted by these other doctors whom they
13 induced to pay to the defendant Sylvan L. Sacolick a
14 portion of the additional Medicaid payments thus generated.

15 "(j) The defendants caused the other doctors
16 to submit these fraudulent claims in their own names,
17 thereby concealing the fact that this billing from the
18 other doctors was, in fact, billing for the same services
19 which the defendant Sylvan L. Sacolick was required to
20 include within his \$4 per visit claims."

21 Lastly:

22 "(k) From in or around January 1973 to in or
23 around November 1974, upon these fraudulent claims, Medicaid
24 paid to the other doctors a total of approximately \$135,000,
25 almost half of which they surrendered in various ways to

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2 the defendant Sylvan L. Sacolick."

3 Paragraph 3 of Counts 2 through 26 continues
4 as follows:

5 "For the purpose of executing said scheme and
6 artifice to defraud and attempting to do so, the defendants
7 Sylvan L. Sacolick and Nicholas Rizzi did deliver and
8 cause to be delivered Invoices for Doctor's Services
9 (Medicaid claims) to the New York City Department of
10 Social Services and thereby did cause to be placed in
11 post offices and authorized depositories for mail matter,
12 and did cause to be delivered by mail, according to the
13 directions therein, and did take and receive therefrom,
14 certain mail matter, to wit, Medicaid payment checks as
15 set out below."

16 There follows 25 counts giving each check number,
17 date, amount and payee.

18 The first four concern checks to Dr. Sahibzada
19 which were sent between March and September of 1973 in
20 amounts ranging from a little over \$2,000 to a little
21 over \$7,000. The exact numbers and amounts are set forth
22 in the indictment which you will have available to you
23 during your deliberations.

24 The checks to Dr. Sahibzada were mailed, two
25 of them, to the Park Avenue address and two to the Second

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2 Avenue address.

3 The next two counts concern checks mailed in
4 August and September of 1973 to Dr. Javali and they
5 amount to approximately \$2600 in one check and \$3600 in
6 the other.

7 The next 18 counts concern checks sent to Dr.
8 Kamen and these checks were initially mailed to the
9 Second Avenue address, but the last -- four of the last
10 five were mailed to the Park Avenue address. The checks
11 cover the period from April, 1973 through August of 1974.

12 With the exception of three checks which I will
13 mention in a second, all of them were for amounts in
14 excess of a thousand dollars but less than \$9,000.

15 There are three smaller checks, \$20, 550, \$273,
16 which I believe the evidence indicated was for payment
17 of the percentage withheld on the prepayment plan for
18 earlier payments.

19 The final count, No. 26, concerns a check of
20 July 10, 1974 in the amount of \$644 -- excuse me, \$6,444
21 paid -- made payable to Dr. Zane at the Park Avenue
22 address.

23 To establish that the defendant is guilty of
24 the crime of mail fraud as charged in Counts 2 through
25 26, the Government must prove beyond a reasonable doubt

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2 each of the following elements:

3 One, that on the date or about the dates
4 alleged in the indictment that there was a scheme or
5 artifice to defraud or to obtain money by fraudulent
6 pretenses or representations as set forth in the indict-
7 ment.

8 Second, that the defendant did devise or intend
9 to devise or became a party to such a scheme or artifice
10 knowingly and wilfully and with intent to defraud.

11 Third, that for the purposes of executing the
12 scheme or artifice, he did use or cause another to use
13 the mails.

14 The first element of the mail fraud count is
15 the existence of a scheme or artifice to defraud by use
16 of false pretenses or representations.

17 The language describing this first element is
18 self-explanatory. A scheme or artifice is merely a plan
19 for the accomplishment of an object. Such a scheme or
20 artifice may be found to exist without formal evidence
21 of any action -- withdraw that -- such a scheme or artifice
22 may be found to exist without evidence of any formal
23 action to make it effective.

24 Fraud is a generic term which embraces all the
25 multifarious means which human ingenuity can devise or

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2 which are resorted to by an individual to gain an advantage
3 over others by false or fraudulent representations,
4 suggestions or by suppression of the truth, or deliberate
5 disregard for the truth.

6 A pretense or a statement or representation
7 is false or fraudulent within the meaning of the statute
8 if known to be untrue or made with deliberate indifference
9 as to its truth or falsity or made or caused to be made
10 with intent to deceive.

11 A false or fraudulent representation may be
12 made by statements of half-truths or the concealment of
13 material facts as well as by affirmative statements or
14 acts.

15 The second element of the mail fraud charge
16 which the Government must establish beyond a reasonable
17 doubt is that when and if the defendant did the acts
18 with which he is charged he acted wilfully and knowingly
19 with intent to defraud.

20 First let me instruct you as to what "wilfully"
21 and "knowingly" do not mean. They do not mean that the
22 Government has to show that the defendant knew he was
23 breaking a particular law or statute before he can be
24 convicted of a crime.

25 "Unlawfully" merely means that the acts were

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2 performed contrary to the law. They also do not mean
3 that the Government has to show that the defendant intended
4 to profit at the expense of the Government or any other
5 person, nor do they have anything to do with the defendant's
6 personal or private reasons for breaking the law.

7 I instruct you that these words "knowingly"
8 and "wilfully" mean deliberately. They mean intentionally.
9 In other words, knowingly and wilfully means that the
10 defendant was aware of what he was doing and intended to do
11 what he did consciously and in the free exercise of his
12 will, or that he acted with deliberate disregard for the
13 truth and with a conscious purpose to avoid learning it.

14 The words "knowingly" and "wilfully" are opposed
15 to the idea of an inadvertent or accidental act. The
16 phrase "intent to defraud" means to act with the specific
17 intent to deceive, ordinarily for the purpose of either
18 causing some financial loss to another or to bring financial
19 gain to oneself. Under this statute a false representa-
20 tion or omission to state a material fact does not amount
21 to fraud unless it is made with fraudulent intent. However
22 misleading or deceptive a plan may be, the use of the
23 mails to execute it does not constitute a crime if the
24 plan was devised in good faith. Honesty and good faith
25 on the part of the defendant is always a good defense to

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2 the charges in these counts. An honest belief in the
3 truth of the representations made is a good defense however
4 inaccurate the statements may turn out to be. The signi-
5 ficant fact is the intent and the purpose with which the
6 defendant acted.

7 If you find that the defendant acted knowingly
8 and wilfully, engaging in a scheme with intent to defraud,
9 you must then consider the next element of the offense
10 charged. That is, whether the mails were used in further-
11 ance of that scheme.

12 The Government alleges that the defendant
13 caused to be mailed envelopes containing Medicaid checks
14 to Dr. Sahibzada, Dr. Javaid, Dr. Kamen and Dr. Zane. It
15 is not necessary that the matter which was mailed contained
16 in itself anything criminal or objectionable, or any mis-
17 representations, or that it discloses a fraudulent purpose
18 or shows that it was in furtherance of the scheme. The
19 mailed matter itself may be wholly innocent. Nor is it
20 necessary that the defendant personally mailed the
21 alleged matter or specifically intended that the mails
22 be used. You need only find that the defendant caused
23 the mailing to be made by taking steps which he knew at
24 the time might naturally and probably result in the use
25 of the mail.

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2 Did the defendant know when the invoices were
3 submitted that the checks in payment thereof would be
4 mailed to the clinic or to the Park Avenue address, as
5 the case may be?

6 Under the mail fraud statute, each separate
7 use of the mails in furtherance of a scheme to defraud
8 constitutes a separate offense. Thus, Counts 2 through
9 26 set forth separate Medicaid checks which the Government
10 alleges were caused to be mailed in connection with the
11 overall scheme to defraud, charged in the descriptive
12 paragraphs immediately preceding those counts.

13 Now going to Counts 27 through 51. You will
14 note that certain Medicaid invoices submitted by the four
15 doctors and Dr. Arandia, in connection with four patients
16 enrolled in the Second Avenue methadone maintenance program
17 are the subject of four sets of four or five counts
18 in the indictment. Each of these patients, as you know,
19 has been given a pseudonym in the indictment to protect
20 that patient's privacy. With respect to each of those
21 four patients the Government has charged the defendant
22 with fraudulent claims against the United States.

23 Thus, for Andrew Joe the Government in Counts
24 27 through 31 set forth five different Medicaid invoices
25 which it alleges were fraudulent claims. The pattern

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2 is repeated for each of the remaining three patients,
3 Veronica Coe, in Counts 33 through 38; Robert Eoe,
4 Counts 40 through 44; and Joan Hoe, Counts 46 through
5 51.

6 These various counts charge violation of the
7 fraudulent claims statute, and that statute reads in
8 pertinent part as follows:

9 "Whoever makes or presents to any department
10 or agency of the United States any claim upon or against
11 the United States, or any department or agency thereof,
12 knowing such claim to be false, fictitious, or fraudulent,
13 shall be guilty of an offense against the United States."

14 Counts 27 through 31 read as follows:

15 "On or about the dates hereinafter set forth
16 in Counts 27 through 31, in the Southern District of New
17 York, the defendants did unlawfully, wilfully and knowingly
18 make and present and cause to be made and presented to
19 the United States Department of Health, Education and
20 Welfare, a department and agency of the United States,
21 for payment, certain claims upon and against the United
22 States, to wit, Invoices for Doctors' Services (Medicaid
23 claims) in the names of physicians hereinafter set forth,
24 for medical services rendered to Andrew Joe, a pseudonym
25 used herein to protect the privacy of a real person who

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2 was enrolled as" -- excuse me -- "real person who was
3 an enrolled patient at the defendant Sylvan L. Sacolick's
4 methadone maintenance treatment program located in the
5 vicinity of 2369-71 Second Avenue, New York, New York.

6 "Said claims were fraudulent, as the defendants
7 then and there well knew, in that, among other things,
8 each sought payment for medical services within the com-
9 petence of a general practitioner, and as such duplicated
10 the Medicaid claims submitted by the defendant Sylvan L.
11 Sacolick for the methadone maintenance treatment of Andrew
12 Joe."

13 After that there are set forth five invoices,
14 one for each of the five doctors, for services performed
15 on various dates in 1973 and 1974.

16 Counts 33 through 38 are identical in language
17 except that they relate to the professional services
18 rendered to Veronica Coe and for Miss Coe there are set
19 forth a total of six invoices, one for each of the five
20 doctors and an additional one for Dr. Zane. These cover
21 services rendered between October, 1973 and April of 1974.

22 Counts 40 through 44 contain the identical
23 charges and language except that the patient in this instance
24 is Robert Eoe. As to Mr. Eoe there are set forth five
25 invoices, one for each of the five physicians, for services

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2 rendered on various dates between March of 1973 and June
3 6 of 1974, and the invoice number for each is given in
4 each of these charges.

5 Counts 46 through 51 have the identical language
6 and charges with respect to the treatment of Joan Hoe.
7 As to Miss Hoe, six invoices are set forth, two each for
8 Drs. Zane -- withdrawn -- two for Dr. Zane and one for
9 each of the other four doctors. These cover services
10 rendered between May of 1973 and June of 1974. Again
11 the invoice numbers, the exact dates and all the other
12 details are set forth in the indictment and will be given
13 to you.

14 In order to find the defendant guilty of any
15 of the Counts 27 through 31, 33 through 38, 40 through
16 44 and 46 through 51, the Government must prove the
17 following elements beyond a reasonable doubt:

18 First, that on or about the dates set forth
19 in each count, which corresponds to a Medicaid invoice,
20 the defendant made or caused, or aided and abetted the
21 presentation of a claim.

22 Secondly, such claim was made or presented upon
23 or against the United States Department of Health,
24 Education and Welfare.

25 Third, such claim was false, fictitious and

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2 fraudulent.

3 And fourth, the defendant acted wilfully, with
4 intent to defraud, knowing that such claim was false,
5 fictitious and fraudulent.

6 You will recall that the first element which
7 the Government must establish beyond a reasonable doubt
8 is that the defendant Rizzi made or presented a claim or
9 caused a claim to be made, or aided and abetted another
10 to cause it to be made. The Government has presented
11 certain evidence here that certain Medicaid invoices were
12 submitted to the New York City Department of Social
13 Services in the names of various doctors working at the
14 Second Avenue methadone maintenance program. The Govern-
15 ment contends that these invoices were in effect false.

16 The second element relating to the fraudulent
17 claim count was that the claim was made against the United
18 States Department of Health, Education and Welfare. The
19 Government produced evidence that the New York City Depart-
20 ment of Social Services submitted reports of Medicaid
21 reimbursement summaries biweekly to the New York City
22 Division of State Claims. This division then filed claims
23 monthly with the New York State Department of Social
24 Services and finally the State submitted such claims
25 in quarterly reports to the United States Department of

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2 Health, Education and Welfare, which reimbursed the
3 State for 50 percent of such claims.

4 If you find that any invoice, once received
5 by the New York City Department of Social Services as
6 part of and pursuant to the Medicaid program constituted
7 a basis for payment of that invoice, and that thereafter
8 HEW funds were paid in partial reimbursement to the State
9 of New York, for payments made on the invoice, then this
10 element of the crime is satisfied as to the count dealing
11 with that particular invoice.

12 In connection with these questions, I remind
13 you that the law doesn't require that the defendant
14 directly submit these claims to the United States Depart-
15 ment of Health, Education and Welfare. Thus, if you find
16 that the defendant aided and abetted another to cause
17 the invoices to be submitted to the City and the City
18 then to make claim for reimbursement to the State and
19 the State in turn to make a claim upon the United States
20 Department of Health, Education and Welfare, then you may
21 find the second element of this crime satisfied.

22 If it was so done, there is no need for the
23 Government to prove that the intermediaries themselves,
24 such as the City or the State behaved fraudulently, or
25 indeed, there is no such contention. If, on the other

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2 hand, you are not satisfied beyond a reasonable doubt
3 that the defendant aided and abetted another to cause
4 claims to be submitted first to the City and ultimately
5 to the Department of Health, Education and Welfare,
6 then you must acquit as to that particular count under
7 consideration.

8 The third element you must find is that the
9 claims were false or fictitious or fraudulent. I have
10 explained those terms in connection with the mail fraud
11 count. In the context of this case, the Government must
12 establish the very submission of these medical invoices
13 in these doctors' names, that this concealed a material
14 fact, to wit: that the services billed for had also been
15 billed for in the name of Dr. Sylvan L. Sacolick as part
16 of the regular \$4-per-patient-per-day methadone maintenance
17 billing.

18 The fourth and last element that the Government
19 must prove beyond a reasonable doubt is that the defendant
20 aided and abetted another person to submit these claims
21 wilfully and knowingly and that such claims were false,
22 fraudulent and fictitious.

23 I have already explained these terms to you,
24 but I should add here that it need only be proven that
25 the defendant knew the claim was false, fictitious and

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2 fraudulent when submitted to the New York City Department
3 of Social Services.

4 It is not necessary for you to find that the
5 defendant knew how or by whom the submission would be
6 processed or that it would be covered by Medicaid or
7 be paid in whole or in part by the United States.

8 Now, returning to Count 1 of the indictment,
9 the conspiracy. It charges a violation of the Federal
10 conspiracy law which reads in part:

11 "If two or more persons conspire to commit any
12 offense against the United States, and one or more such
13 persons do any act to effect the object of the conspiracy,
14 each is guilty of an offense against the United States."

15 The conspiracy charge in the indictment is to
16 the effect that "From on or about September 1, 1972 up
17 to and including the date of the filing of this indictment
18 in the Southern District of New York, the defendants
19 Sylvan L. Sacolick and Nicholas Rizzi did unlawfully, wil-
20 fully and knowingly combine, conspire, confederate and
21 agree together and with each other, and with persons to the
22 Grand Jury known and unknown, to defraud the United States, and
23 to violate Title 18, United States Code, Sections 287, 1001
24 and 1341.

25 "It was part of said conspiracy that the defendants

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2 and the co-conspirators would and did agree to defraud
3 the United States of its lawful right to have the United
4 States Department of Health, Education and Welfare reimburse
5 the State of New York, as provided in the Medicaid Act,
6 fairly and impartially, without undue influence, unlawful
7 inducement, false representation, favor or fraud, by
8 causing the State of New York to file claims for reimburse-
9 ment under said Medicaid Act which were based, in part,
10 upon Invoices for Doctor's Services and other documents,
11 which were false, fictitious and fraudulent in material
12 respects.

13 "3. It was further a part of said conspiracy
14 that the defendants and their co-conspirators would and
15 did make and cause to be made fraudulent claims upon and
16 against the Department of Health, Education and Welfare,
17 an agency and department of the United States.

18 "4. It was further a part of said conspiracy
19 that the defendants and their co-conspirators, in matters
20 within the jurisdiction of a department and agency of the
21 United States, to wit, the United States Department of
22 Health, Education and Welfare, would and did make and
23 cause to be made false, fictitious and fraudulent statements
24 and representations knowing the same to be false, fictitious
25 and fraudulent.

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2 "5. It was further a part of said conspiracy
3 that the defendants and their co-conspirators would and
4 did devise a scheme and artifice to defraud the City of
5 New York, the State of New York and the United States
6 Department of Health, Education and Welfare, and to obtain
7 money by false, fictitious and fraudulent pretenses and
8 representations, and for the purpose of executing said
9 scheme would and did place and cause to be placed certain
10 checks in authorized depositories for mail."

11 The sixth paragraph of the conspiracy claim I
12 read to you a little bit earlier and I hope you will
13 excuse me if I don't read it to you again. I'm doing
14 quite enough reading as it is today.

15 I'm sure you remember all the various means
16 involved in the conspiracy charge.

17 The count then continued by setting forth
18 various means whereby the objects of the conspiracy were
19 allegedly carried out. Those are the means, causes in
20 Paragraph 6.

21 In this conspiracy charge it is charged that the
22 defendant conspired to commit the crimes charged in the
23 substantive counts of this indictment. A conspiracy to
24 commit a crime is an entirely separate and different
25 offense from the substantive crime. The essence of the

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2 crime of conspiracy is an agreement or understanding to
3 violate other laws. Thus if a conspiracy exists, even
4 if it should fail in its purpose, it is still a crime.

5 Consequently, with respect to this conspiracy
6 count, there is no need for the Government to prove an
7 actual violation of the substantive Federal law involved.
8 However, the crime of conspiracy does have several elements
9 which the Government must prove beyond a reasonable doubt:

10 First, the Government must prove that a single
11 overall conspiracy charged in the indictment existed.

12 Second, that the defendant Nicholas Rizzi was
13 a wilful, knowing party to the conspiracy.

14 Third, that at least one of the overt acts set
15 forth in the indictment occurred.

16 The gist of the crime of conspiracy is the
17 unlawful combination or agreement to violate the law.
18 A conspiracy has sometimes been called a partnership in
19 criminal purpose in which each of the members becomes the
20 agent of another member -- of every other member.

21 This indictment alleges that sometime between
22 September 1972 and the present, there existed between
23 Sylvan L. Sacolick and Nicholas Rizzi an unlawful conspiracy
24 or agreement to defraud the United States and to file
25 fraudulent claims and false statements and to devise an

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2 artifice to defraud the City of New York, the State of
3 New York and the United States.

4 Therefore, the indictment alleges that the
5 objectives of the agreement were to violate the statute
6 prohibiting those acts.

7 To establish that such a conspiracy existed,
8 the Government is not required to show that the two
9 defendants entered into a formal agreement stating that
10 they formed a conspiracy to violate the law and setting
11 forth the details of the plans, the means by which the
12 unlawful project would be carried out.

13 It is sufficient if it is shown beyond a reason-
14 able doubt that the defendants in any manner, through
15 any contrivance, came to a common understanding to recruit
16 the Second Avenue doctors and to cause them to submit false
17 and fraudulent bills for their services for reimbursement
18 from Medicaid.

19 It is not necessary that the Government prove
20 that the conspiracy existed throughout the entire period
21 alleged in the indictment. It is sufficient if it proves
22 that the single overall conspiracy charged in the indict-
23 ment existed for any part of that period.

24 In determining whether or not an unlawful
25 agreement as charged in the indictment was actually formed,

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2 you may weigh the acts and conduct of the alleged conspira-
3 tors which you find to have occurred in order to further
4 the apparent criminal purpose and the reasonable inferences
5 to be drawn from such evidence.

6 If upon consideration of all the evidence which
7 is applicable you find beyond a reasonable doubt that the
8 minds of at least two persons met in any understanding
9 way, and that they agreed to form a conspiracy, the gist
10 of which I have explained to you, to work together in
11 furtherance of the unlawful objectives alleged, then
12 proof of the conspiracy is complete.

13 If you find that the conspiracy existed, it
14 is not required that the Government prove that all the
15 means alleged in the indictment were in fact brought into
16 play. One is sufficient.

17 Similarly, the Government need prove only one
18 of the objectives set forth. If you do conclude that a
19 conspiracy as charged did exist, you must next determine
20 whether the defendant was a member, and further whether
21 he joined the conspiracy with knowledge of its unlawful
22 purpose.

23 To find membership in a conspiracy, you must
24 find that a person knowingly and willfully joined therein.
25 Thus, mere knowledge of the existence of the conspiracy,

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2 or any illegal act on the part of an alleged co-conspirator,
3 or mere association with one or more of the conspirators,
4 is not sufficient to establish membership in the conspir-
5 acy. Nor is it sufficient if a person who has knowledge
6 of the conspiracy happens to act in a way which furthers
7 some object or purpose of disobeying or disregarding the
8 law.

9 It is not necessary that a person be fully
10 informed as to the details or the scope of the conspiracy
11 in order to justify an inference of knowledge on his
12 part. Even if one joined the conspiracy after it was
13 formed and was engaged in it to a degree more limited
14 than that of other conspirators, he is equally culpable
15 so long as you have found that he was a conspirator.

16 Each member of the conspiracy may perform
17 separate and distinct acts at different times and at
18 different places. Each conspirator is none the less
19 held responsible for all that is done by his co-conspirators
20 in furtherance of the conspiracy and all that may be done
21 thereafter during the existence of the conspiracy and
22 while he remains a member.

23 A conspiracy once formed is presumed to have
24 continued until its objectives are accomplished or there
25 is an affirmative act of termination by its members or

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2 it is otherwise terminated as, for example, by arrest.

3 So, too, once a person is found to be a member
4 of a conspiracy, he is presumed to continue his membership
5 until its termination unless there is an affirmative proof
6 of withdrawal or disassociation by that conspirator.

7 As to the third element, the overt act require-
8 ment, the overt act need not be in itself a criminal act.
9 It is one of the elements of a conspiracy charged because
10 it demonstrates that the conspirators have gone beyond
11 the mere stage of thinking about an illegal act or an
12 illegal goal because merely thinking about it is not a
13 crime in and of itself.

14 An overt act can be any act, such as, for
15 example, a meeting, as long as it is an act performed
16 in furtherance of the conspiracy.

17 The Government need not prove that all of the
18 overt acts alleged in the indictment were performed, but
19 it must prove that at least one of the acts was performed
20 and that it was in furtherance of the conspiracy. And
21 that it occurred during the period of the conspiracy and
22 that it occurred in the district in which this Court sits.

23 The indictment sets forth eight overt acts.
24 These are as follows:

25 "1. On or about September 21, 1972 the defendant

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2 Sylvan L. Sacolick signed a Statement by Private Physician
3 of Participation in the Methadone Maintenance Therapy
4 Program.

5 "2. On or about March 27, 1973, the defendant
6 Sylvan L. Sacolick signed his name on the back of a
7 Medicaid check payable to Afzal H. Sahibzada in the amount
8 of \$7,248.50.

9 "3. On or about April 26, 1973, the defendant
10 Sylvan L. Sacolick signed his name on the back of a
11 Medicaid check payable to Dr. George F. Kamen in the
12 amount of \$4,417.50.

13 "4. On or about August 15, 1973, the defendant
14 Sylvan L. Sacolick received a personal check in the
15 amount of \$1,540 from Khawata Ahmad Javaid.

16 "5. On or about September 28, 1973, the
17 defendant Nicholas Rizzi had a conversation with Dr. Javaid
18 about a payment to the defendant Sylvan L. Sacolick.

19 "6. On or about April 24, 1974, the defendant
20 Nicholas Rizzi directed a patient to go to 1175 Park
21 Avenue, New York, New York.

22 "7. On or about July 10, 1974, the defendant
23 Nicholas Rizzi had a conversation with Mircea Zane about
24 a payment to the defendant Sylvan L. Sacolick.

25 "8. On or about July 29, 1974, the defendant

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2 Sylvan L. Sacolick received a personal check from Mircea
3 Zane in the amount of \$2,872."

4 I have already instructed you that as a matter
5 of law the borough of Manhattan is within the Southern
6 District of New York where the Government alleges that
7 these acts occurred.

8 While we are talking about these charges, I
9 wish to bring to your attention the fact that a minor
10 variation in dates or amounts are virtually inevitable
11 in any case involving more than a single transaction
12 and consequently the law and common sense agree that you
13 are not to worry about that.

14 Specifically, I instruct you that it does not
15 matter if a specific transaction is alleged to have
16 occurred on or about a certain date and the testimony
17 indicates that in fact it was on another date. The law
18 only requires a substantial similarity between the dates
19 alleged in the indictment and the date established by the
20 testimony or other evidence.

21 You will note among the elements of each crime
22 that I have described to you is an element relating to the
23 defendant's state of mind. Now, these states of mind
24 involving as they do the thought processes, cannot be put
25 down on a piece of paper and offered in evidence. It is

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2 generally impossible to ascertain or prove directly what
3 was the operation of the mind or the intentions of any
4 person and direct proof is not necessary. These are
5 matters of inference which you may make from the facts
6 as you find them to be after considering the testimony,
7 stipulations and exhibits in evidence.

8 You must weigh a person's conduct, his acts,
9 his statements, and all the surrounding circumstances,
10 and then apply your common sense, just as you would if
11 called upon to assess the state of mind of anyone in the
12 everyday affairs of your life.

13 The matter of drawing inferences from facts is
14 not a matter of guesswork or speculation. An inference is
15 a logical, factual conclusion which you might reasonably
16 draw from other established facts in evidence.

17 As you undertake to decide whether or not the
18 defendant acted with the requisite knowledge and wilfulness
19 required in each count, you may consider as many things
20 as your experience instructs you. You may consider
21 whether you find in the evidence circumstances of secrecy
22 or intrigue or deviousness or attempts to conceal the
23 real nature of any of the transactions in which you --
24 in which he may have engaged or which you may find he had
25 actual knowledge that some other participant engaged.

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2 Ask yourselves such questions as these: What
3 was the age, intelligence, background and experience of
4 the defendant? Does that age, intelligence, background
5 and experience make it likely or unlikely, plausible
6 or implausible, probable or improbable that the defendant
7 fully understood precisely what was going on? Consider
8 the motive if any of the defendant. Did he have a pecuniary
9 or financial interest in the outcome of any of these
10 transactions? How great was this motive, if any?

11 If you assess the defendant's state of mind in
12 terms of whether he acted knowingly -- that is, whether
13 or not he was aware of facts which made his alleged con-
14 duct criminal, you should know that the law is that a
15 person cannot avoid criminal liability by deliberately
16 closing his eyes to facts he had a duty to see, if you
17 believe he, in his position as administrator of the clinic
18 had such a duty, and by consciously avoiding the discovery
19 of the truth of the matter.

20 How do you determine what the truth is? I
21 mentioned to you at the very start of the trial, before
22 you heard a single word of the testimony, that it was
23 important for you not only to listen, but to look at and
24 observe each of the witnesses as he testified.

25 Your determination of the credibility of a

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2 witness very largely depends upon the impression that he
3 or she may have made upon you as to whether or not he
4 or she was giving an accurate version of what occurred.

5 When you walk into this jury box and sit down
6 you do not leave your common sense behind you. While
7 you are sitting in the jury room deliberating, you have
8 your common sense and your good judgment and your own
9 experiences upon which to draw such conclusions as are
10 necessary.

11 The degree of credibility you give a witness
12 should be determined from his demeanor, his relationship
13 to the controversy and to the parties and his bias
14 and impartiality, the reasonableness of his statements,
15 the strength and weaknesses of his recollections, viewed
16 in the light of all the other testimony and attendant
17 circumstances.

18 A witness may be discredited or impeached by
19 showing that he has made statements which are inconsistent
20 with his present testimony. Also at times a witness will
21 testify that an event occurred or that he observed some-
22 thing, yet we know from experience that the manner of
23 speaking is such that we can reasonably draw the conclusion
24 that the truth is the exact opposite of what he testified.

25 Some things are just not credible and you don't

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2 believe that people do them even if they testify under
3 oath that they have done them. In short, what you do
4 after evaluating the testimony, and a person's giving of
5 testimony, his demeanor, and so on, you size up that person
6 as you do when you are trying to arrive at any important
7 decision in your own private affairs.

8 The ultimate question with respect to the witness
9 always is: Did that witness appear to be telling the
10 truth when he testified before you? If you believe that
11 a witness knowingly testified falsely concerning any
12 material matter, you have the right, after considering
13 all of the evidence of such witness, to accept or reject
14 such testimony in whole or in part.

15 In other words, if you find that any witness
16 wilfully testified falsely to any material matter, you
17 may reject the entire testimony of that witness or you
18 may accept such part or portion of it as commends itself
19 to your belief or which you may find corroborated by other
20 evidence.

21 The law does not compel a defendant in a criminal
22 case to take the witness stand and testify and no presump-
23 tion of guilt may be raised, and no inference of any
24 kind may be drawn, from the failure of a defendant to
25 testify.

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2 The law never imposes upon a defendant in a
3 criminal case the burden or duty of calling any witness
4 or producing any evidence. The general rule is that
5 witnesses are permitted to testify only to facts and not
6 to express their opinions. The exception to that rule
7 are expert witnesses. A person is an expert witness if
8 he is qualified in some particular technical matter.
9 In this case the Government has called experts to testify
10 as to the Medicaid billings and over payments to the
11 Second Avenue clinic and as to the operation of methadone
12 clinics in general.

13 An expert may testify as to his opinion on a
14 subject concerning which he has special knowledge. This
15 is allowed on the theory that the advice of one experienced
16 and versed in technical or special subjects may aid the
17 jury.

18 You may consider the expert's qualifications
19 and opinions or his reasons, if any, and give his testimony
20 such weight as you feel it deserves. Expert opinion is
21 purely an advisory opinion and you may reject it entirely
22 if, in your judgment, the reasons given for it are not
23 convincing and sound. The determination rests with you
24 and not with the expert.

25 You may not draw any inference favorable or

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2 unfavorable towards the Government or the defendant on
3 trial from the fact that certain persons weren't named as
4 defendants or having been named are not on trial before
5 you now. Those matters are wholly outside your concern
6 and have no bearing on your functions as jurors.

7 The important thing is to focus upon the
8 defendant before you. Whatever you may think of the
9 culpability of Dr. Sylvan Sacolick, he is not on trial
10 here at this time. The only person on trial is Nicholas
11 Rizzi. It is his guilt or innocence and his alone that
12 you are called upon to judge. Consider only the evidence
13 against Nicholas Rizzi.

14 Under your oaths as jurors, you cannot allow
15 a consideration of the punishment which may be assessed
16 against the defendant, if convicted, to influence your
17 verdict in any way, or in any sense enter upon your
18 deliberations.

19 The duty of imposing sentence rests exclusively
20 upon the Court. Your function is to weigh the evidence
21 in the case and to determine the guilt or innocence of
22 the defendant solely upon the basis of such evidence and
23 the law. You are to decide the case upon the evidence
24 and the evidence alone, and you must not be influenced by
25 any assumption, conjecture or sympathy or any inference

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2 not warranted by the facts which have been proved to your
3 satisfaction.

4 If you find a reasonable doubt that the defendant
5 Nicholas Rizzi has committed or all of the offenses
6 charged here, you should not hesitate to acquit him and
7 such count or counts. But, on the other hand, if you
8 find beyond a reasonable doubt that the law has been
9 violated as charged, you should not hesitate because of
10 sympathy or any other reason, to render a verdict of
11 guilty.

12 Under your oaths as jurors, you are not to be
13 swayed by sympathy, you are to be guided solely by the
14 evidence in the case and the crucial hard core question
15 that you must ask yourself as you sift through this
16 evidence is: Where do you find the truth? This is a
17 quest for truth and that's what a trial is. The only
18 triumph in any case, whether it be civil or criminal, is
19 whether or not truth has triumphed. If it has, then justice
20 has been done. If not, justice will not have been done.

21 You are to determine the guilt or innocence
22 of the defendant Nicholas Rizzi solely on the basis of
23 the evidence and subject to the law as I have charged
24 you.

25- The most important part of this case is the

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2 part which you now as jurors are about to play, because
3 it is for you and you alone to decide whether this defendant
4 is guilty of the crimes charged.

5 I know you will try the issues that have been
6 presented to you according to the oath which you have
7 taken as jurors, in which you have promised that you
8 would well and truly try the case and the issues joined
9 in this case, and a true verdict render.

10 And I suggest to you that if you follow the
11 oath and try the issues without combining your thinking
12 with any emotions, you will arrive at a just verdict.

13 The charges here, ladies and gentlemen, are most
14 serious. The just determination of this case is important
15 to the Government and to the public. It is equally important
16 to the defendant. Under your oath as jurors, you must
17 decide the case without fear or favor, and solely as I
18 have stated, in accordance with the evidence and the law.

19 The Government, to prevail, must prove the
20 essential elements of each alleged crime by the required
21 degree of proof, as already explained in these instruc-
22 tions. If it succeeds, your verdict should be guilty.
23 If it fails, your verdict should be not guilty.

24 Thus, you may find the defendant either guilty
25 on all counts or you may find him not guilty on all counts,

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2 or you may find him guilty on some counts, and not guilty
3 on others, or vice versa.

4 The verdict in the instance of each count must
5 be unanimous. All jurors must agree to render a verdict
6 on any count.

7 Each juror is entitled to his own opinion.
8 What you are required to do is to go into the jury room
9 and exchange views with one another, review the evidence,
10 listen to the arguments of your fellow-jurors, present
11 your own views, consult with one another and reach an
12 agreement solely and only upon the evidence in accordance
13 with the instructions of law that I have given you.

14 If you should have a point of view that differs
15 from that of your fellow-jurors, you should listen to
16 argument based upon the evidence with an open mind. If
17 you are persuaded that your point of view should yield
18 upon the evidence and the law, there is no reason why
19 you should not change your mind. However, the final vote
20 must reflect your own conscientious judgment as to how
21 the case should be decided. No juror should surrender
22 his honest conviction as to the weight or effect of the
23 evidence solely because of the opinion of his fellow-jurors
24 or merely for the purposes of returning a verdict.

25 You may have brought into the jury room any of

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2 the exhibits you may wish to send for. If you need any
3 of the testimony read back to you, your foreman may send
4 a note and the note should describe specifically what
5 testimony you want read from what witness, and we will
6 attempt to locate that testimony and have it read to you,
7 if that becomes necessary.

8 You will also take into the jury room with you
9 a copy of the indictment, to which you can refer if you
10 find that necessary.

11 Counsel may approach the bench.

12 (At the side bar.)

13 THE COURT: Are there any exceptions or additions
14 to the charge?

15 MS. HARRIS: I have none, your Honor.

16 MR. ZUCKERMAN: No exceptions. The only request,
17 your Honor, is the one I made before, your Honor, insofar
18 as the hearsay declaration by Sacolick.

19 THE COURT: All right. I have already ruled
20 on that.

21 (In open court.)

22 THE COURT: Place the marshal under oath.

23 (One marshal was duly sworn.)

24 THE COURT: There is one matter the marshal will
25 discuss with you when you go into the jury room. He will

JUDGMENT AND COMMITMENT ORDER

United States of America vs.

United States District Court for

DEFENDANT

SOUTHERN DISTRICT OF NEW YORK

NICHOLAS RIZZI

DOCKET NO. 76 Cr. 1000(GLG)

JUDGMENT AND PROBATION/COMMITMENT ORDER

62-7410-54

In the presence of the attorney for the government
the defendant appeared in person on this dateMONTH DAY YEAR
October 6, 1977

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Gerald Zuckerman, Esq.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea.☐ NOLO CONTENDERE.☐ NOT GUILTYFINDING &
JUDGMENTThere being ~~admission~~ verdict of ☐ NOT GUILTY. Defendant is discharged
☒ GUILTY.Defendant has been convicted as charged of the offense(s) of Using the mails in a scheme and
artifice to defraud. (Title 18, United States Code Section 1341);
False claims against the Government. (Title 18, United States Code
Section 287); Conspiracy so to do. (Title 18, United States Code
Section 371). Accessory (2).SENTENCE
OR
PROBATION
ORDERThe court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary
was shown, or appeared to the court, the court adjudged the defendant guilty as charged and ordered that: The defendant is
hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of
THREE (3) YEARS on Counts 1, 2, 27, 33, 40, 46, pursuant to Section 3651
Title 18, United States Code, as amended, with the provision that
the defendant be confined in a JAIL TYPE INSTITUTION for a period of
SIX (6) MONTHS, as provided in the aforesaid section.SPECIAL
CONDITIONS
OF
PROBATIONExecution of the remainder of sentence is suspended, and the
defendant is placed on probation for a period of THREE (3) YEARS,
subject to the standing probation order of this Court.Imposition of sentence is suspended on remaining counts, -
Counts 3 thru 26, 28 thru 31, 34 thru 38, 41 thru 44, and 47 thru 51,
and defendant placed on probation for a period of THREE (3) YEARS.
Additional condition of Probation is that the defendant participate
in a Drug Treatment Program.ADDITIONAL
CONDITIONS
OF
PROBATIONIn addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the
reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at
any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke
probation for a violation occurring during the probation period.COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver
a certified copy of this judgment
and commitment to the U.S. Mar-
shal or other qualified officer.

SIGNED BY

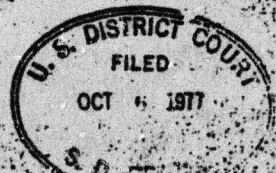
U.S. District Judge

U.S. Magistrate

GERALD L. GOETTEL, U.S.D.J.

Date

10/6/77



COPY RECEIVED

ROBERT B. MURKIN JR.
DEC 28 1954

U. S. ATTORNEY
SO. DIST. OF N. Y.